

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

HÉCTOR RIVERA-VALENTÍN,

Plaintiff,

V.

EDGAR DELGADO-GARCÍA;  
OMAYRA VILLANUEVA-SANABRIA,

## Defendants.

Civil No. 10-2163 (JAF)

## ORDER

Plaintiff is an inmate at Guerrero Correctional Facility in Aguadilla, Puerto Rico, serving a twenty-four-year sentence pursuant to a judgment by a Puerto Rico court. (Docket No. 17.) Plaintiff brings the instant suit under 42 U.S.C. § 1983 alleging violations of his rights under the U.S. Constitution during and in preparation for his criminal trial. (Docket Nos. 4; 10; 17.) Guided by the First Circuit’s opinion in Trenkler v. United States, 536 F.3d 85, 96–98 (2008), and the U.S. Supreme Court’s opinion in Castro v. United States, 124 U.S. 786, 791–92 (2003), we hereby **NOTIFY** Plaintiff that we recharacterize his complaint as a petition for relief from a state-court conviction under 28 U.S.C. § 2254. As such, his petition is subject to the timing requirements outlined in § 2244(d). Further, Plaintiff’s petition shall not be granted unless it appears that Plaintiff has exhausted the remedies available to him in the courts of Puerto Rico. See § 2254(b).

If Plaintiff chooses to proceed with this petition, any petition he files in the future will be subject to the restrictions on “second or successive motions” outlined in § 2244(b). Plaintiff may withdraw or amend his petition, to include all the § 2254 claims he believes he has, by

1 Civil No. 10-2163 (JAF)

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3 **July 8, 2011.** We have attached a § 2254 form to this Order to aid in the amendment of  
4 Plaintiff's complaint.

5 Given this recharacterization, standards for dismissal under 42 U.S.C. § 1983, the basis  
6 for Defendants' motion to dismiss (Docket No. 15), no longer apply, and we **DENY**  
7 Defendants' motion as **MOOT**. We reserve judgment on Plaintiff's request for appointment  
of counsel (Docket No. 18) until we make an initial assessment of the viability of his claims,  
after the time for withdrawal or amendment has passed.

8                   **CLERK TO NOTIFY PLAINTIFF HÉCTOR RIVERA-VALENTÍN**, at his address:  
9 Inst. Guerrero 304 6 A2, PO Box 3999, Aguadilla, PR 00605.

10                  **IT IS SO ORDERED.**

11 San Juan, Puerto Rico, this 6<sup>th</sup> day of June, 2011.

12                  s/José Antonio Fusté  
13                  JOSE ANTONIO FUSTE  
14                  United States District Judge